

FILED**MAY 20, 2010**KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

RICHARD LEON GOYETTE

§

v.

§

2:10-CV-37

§

UNITED STATES OF AMERICA

§

§

REPORT AND RECOMMENDATION TO DENY
MOTION TO DISMISS UNDER 28 U.S.C. § 2255

Before the Court is a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255. On March 19, 2010, in response to this Court's Order to Show Cause, the government filed a Motion to Dismiss the Motion to Vacate. The government's Motion to Dismiss was based upon the fact that defendant had a direct appeal of the underlying criminal conviction pending in the Fifth Circuit. After filing the Motion to Dismiss this case, the government filed a Motion to Dismiss the appellate case. The Fifth Circuit granted that Motion to Dismiss on May 13, 2010. *United States v. Goyette*, No. 09-11046. Mandate in that case is set to issue on June 3, 2010.

Because defendant Goyette no longer has a direct appeal of his criminal conviction pending in the Fifth Circuit, the government's Motion to Dismiss filed in this case has no merit. Accordingly, it is the RECOMMENDATION that the Motion to Dismiss filed by the government be DENIED.

IT IS SO RECOMMENDED.

ENTERED this 20th day of May, 2010.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).